

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ACCREDO HEALTH, INC.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

) Civil Action No. 03-2216-BBD

) CLASS ACTION

) LEAD PLAINTIFFS' MOTION *IN LIMINE*
) #19 TO PRECLUDE DEFENDANTS FROM
) INTRODUCING EVIDENCE OF THE
) PRICE OR MOVEMENT OF ACCREDO
) SECURITIES AFTER THE STATUTORY
) 90-DAY "LOOK BACK" PERIOD

Lead Plaintiffs, Louisiana School Employees' Retirement System and Debra Swiman (together, "Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully ask the Court to prohibit Defendants from introducing evidence of the price or movement of Accredo securities after the statutory 90-day "look back" period set forth in 15 U.S.C. 78u-4(e).

Defendants should be precluded from offering evidence of the price or movement of Accredo common stock following July 7, 2003, the last day of the statutory 90-day "look back" period set forth in 15 U.S.C. 78u-4(e). Lead Plaintiffs expect Defendants will argue at trial that positive movements of Accredo stock following that date, including Accredo's acquisition by MedCo Health Solutions, Inc. on August 18, 2005, somehow inoculate their fraudulent behavior during the Class Period or minimize the damages suffered by investors.

Evidence of Accredo's stock price movement after July 7, 2003 is irrelevant to any issue in this case, including the core issue of whether Defendants made false and misleading statements during the Class Period. Further, there is no evidentiary foundation for the notion that Accredo's stock price or movement long after the underlying events says anything at all about Defendants' wrongdoing in this case. As discussed below, the stock trading history for the 90 days following the April 8, 2003 corrective disclosure that ends the Class Period in this case is relevant for the *sole* purpose of calculating and limiting the Class' recoverable damages. 15 U.S.C. 78u-4(e). Yet, evidence regarding post-July 7, 2003 price or movements of Accredo securities may be misleading to a jury and unfairly prejudicial, especially if Defendants suggest that those price movements somehow vindicate their prior fraudulent actions. The minimal probative value is substantially outweighed by the unfair prejudicial effect of such argument. *See* Fed. R. Evid. 403. Therefore, all such evidence and all arguments based on such evidence should be precluded.

Evidence of Accredo's stock price movement through July 7, 2003, is relevant for one reason and one reason only: to calculate damages under the "look back" provision of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(e)(1), which limits damages to the difference between the purchase price and the mean trading price of the security during the 90-day period beginning on the day of the corrective disclosure.¹ July 7, 2003 is the last day of the 90-day period following the revelation on April 8, 2003 that Accredo had not adequately reserved for the A/R of the SPS acquisition.

¹ 15 U.S.C. § 78u-4(e) provides as follows:

(e) Limitation on damages

(1) In general

Except as provided in paragraph (2), in any private action arising under this title . . . in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(2) Exception

In any private action arising under this title . . . in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(3) Definition

For purposes of this subsection, the "mean trading price" of a security shall be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in paragraph (1).

Defendants offer no evidence or expert testimony – nor could they – regarding how the Company’s stock would have traded following July 7, 2003. Absent an expert opinion evidencing how the stock market and Accredo’s sector in general has moved since July 7, 2003 and whether or not Accredo’s stock has tracked those movements, Defendants’ reference to Accredo’s stock price following the 90-day statutory “look back” period is devoid of probative value and much more likely to confuse and mislead, rather than help, the jury. *See* Fed. R. Evid. 403.

Moreover, there is no factual foundation for the argument that Accredo’s stock price after July 7, 2003 indicates in any respect that Defendants did (or did not) violate the federal securities laws. Without such a foundation, Accredo’s stock price and arguments based on it are irrelevant and highly prejudicial – suggesting to the jury, without any evidentiary foundation, that Accredo’s stock price movements long after the Class Period and statutorily delineated “look back” period should somehow permit Defendants to escape liability.

Accordingly, Lead Plaintiffs respectfully request that the Court enter an order precluding Defendants from offering evidence of the price or movement of Accredo securities after July 7, 2003, the last day of the statutory 90-day “look back” period set forth in 15 U.S.C. 78u-4(e).

DATED: September 8, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 8, 2008.

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